GUEST COMMENTARY

A portfolio of domestic commitments: Implementing common but differentiated responsibilities

By Robert N. Stavins, Albert Pratt Professor of Business and Government, Harvard Kennedy School

International negotiations are focussed on developing a climate policy framework for the post-2012 period, when the Kyoto protocol's first commitment period will have ended. To date, efforts have not produced a politically, economically, and environmentally viable structure for a future climate agreement.

An effective, but more flexible and politically palatable approach could be an international agreement on a "portfolio of domestic commitments." Under such an arrangement, nations would agree to honour commitments to greenhouse gas emission reductions laid out in their own domestic laws and regulations. A portfolio of commitments might emerge from a global meeting such as the UN conference of the parties, or a smaller number of major economies could negotiate an agreement among themselves and invite others to join.

The core of a portfolio of domestic commitments is agreement among a set of countries to conform to the climate change mitigation requirements specified by their respective domestic laws, regulations, and official planning documents The portfolio approach gives member countries free rein to dictate the precise form their domestic commitments will take, whether those be gas cap-and-trade systems, carbon taxes, intensity targets, performance or technology standards, or other instruments.

A portfolio agreement should be highly credible, given that it is grounded in domestic commitments, enforceable by law previously made by the very governments signing on to the international agreement. Domestic commitments might take the form of specified greenhouse gas emission targets or, as stated in the Bali Action Plan, "nationally-appropriate mitigation actions" (NAMAs). A target-based approach has the advantage of being transparent and relatively simple to aggregate across countries to reach a global target. On the other hand, action-oriented goals can be more concrete and may be easier for many governments to implement in the short term. There is no reason why both targets and actions could not be pursued simultaneously.

Under a portfolio approach, these domestic commitments could be represented in a table of national schedules attached to an agreement. Such schedules would signal a continuing commitment to the international community, and would provide a disincentive for member nations to deviate from them in the future.

A primary consideration for a portfolio agreement is the well-established principle of "common but differentiated responsibilities." This principle acknowledges that responsibility is shared for solving the climate change challenge, but suggests that historical differences in contribution to the problem and economic and technical disparities be reflected in varying national commitments. A portfolio of domestic commitments may be particularly well-suited to implement this principle because it allows for countries to make commitments along a continuum of stringency, rather than dividing nations into two groups as did the Kyoto protocol. The placement of each country upon the continuum would depend on an array of political, economic, and environmental concerns. Negotiators will inevitably need to tackle a number of key issues in crafting a portfolio agreement, three of which we highlight here.

• Rigidity of commitments

Climate negotiators may wish to bind future governments by barring relaxation or abandonment of preexisting climate commitments. Amendments might be allowed only if they maintained or strengthened domestic commitments to climate change mitigation. Such a pre-commitment strategy is not generally included in domestic legislation or plans, and it is likely to require careful wording and additional domestic legislation to become effective in some countries. A variation on this position would be to allow revision of domestic commitments, but only at specified intervals, in order to account for dramatic economic, political, or environmental shifts.

• Type of legal instrument

There are a number of possible structures for an agreement on a portfolio of domestic commitments, each with different implications under international law. A treaty is the most formal option and would be the most binding on participating nations. But treaties are difficult to craft and face the perils of national ratification. Outside of a treaty, there are various other instruments of international law that could be used in the portfolio approach. For example, in the US, congressional-executive ("implementation agreements") and sole-executive agreements can be entered into by the President and do not require the approval of two-thirds of the Senate, as do treaties. Other "soft law" instruments that merit consideration are explicitly nonbinding agreements, political declarations, and UN declarations.

• Monitoring and MRV

A portfolio agreement could rely on countries to be prompted by international pressure to enforce their commitments, or an agreement could take a more active role. The agreement could, for example, put in place an international monitoring body, license domestic entities in each country to monitor national commitments, or suggest model codes for enforcement. International assistance may be necessary to aid countries lagging in technical or administrative capacity to monitor greenhouse gas emissions and enforce domestic policies. More broadly, the agreement would need to define — to the extent possible — uniform measurement, reporting, and verification (MRV) procedures and assure that all countries could implement these procedures.

A portfolio of domestic commitments has several advantages as the foundation of a future international climate policy architecture. The agreement could be flexible enough to allow countries to implement the mitigation instruments of their choice and link or aggregate those instruments with domestic instruments in other nations if they so chose. It could also allow for countries to accede at various times, thus giving them adequate time to prepare to participate. This approach could also be an ideal vehicle for implementing the principle of common but differentiated responsibilities, since member countries would not need to be lumped together into rigid tiers of commitment.

Perhaps most crucial is the political feasibility of the portfolio approach. In recent months, several major economies have expressed willingness to consider a climate policy architecture along these lines, including Australia, India, and the United States. For this reason alone, the portfolio approach merits serious consideration, despite the significant hurdles to negotiating an effective portfolio agreement.